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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

RANDY DOSSAT, an individual

Plaintiff,

vs.

HOFFMANN-LA ROCHE, INC. dba ROCHE  
LABS, a New Jersey Corporation; ROCHE  
LABORATORIES, INC., a corporation,  
DOES 1 through 10, inclusive, ROES  
CORPORATIONS/ENTITIES 1 through 10  
inclusive,

Defendants.

Case No.: 2:09-CV-00245-KJD-PAL

**DEFENDANTS' REPLY TO PLAINTIFF'S  
RESPONSE TO DEFENDANTS' MOTION  
IN LIMINE TO EXCLUDE FROM  
EVIDENCE AND TESTIMONY INVOICES  
FROM DEFENDANTS' ATTORNEYS**

**A. PLAINTIFF'S RESPONSE MISSTATES THE FACTS SURROUNDING  
DEFENDANTS' INADVERTENT DISCLOSURE OF THEIR BILLING  
INVOICES.**

Plaintiff's Response claims that Defendants' *counsel* sent Howard & Howard's invoices to Plaintiff directly. This is not the case. When Plaintiff's attorney first notified Defendants' counsel that Plaintiff had received one of its invoices, Defendants' counsel did not know how that could have occurred, and after talking to Howard & Howard's office staff, assumed that Howard & Howard had sent the invoice to Plaintiff by accident.

Thereafter, Plaintiff's attorney advised Defendants' counsel that Plaintiff had received another of Howard & Howard's invoices. At that point, Defendants' counsel asked Plaintiff to return the invoices and investigated the matter further. Upon review of the invoices and further

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discussions with Plaintiff's attorney, it was discovered that Howard & Howard had properly sent its invoice to Roche's accounting department at its corporate headquarters in New Jersey. Defendants' accounting department received the invoice; but when it saw the subject line of the document (which referenced Randy Dossat), it simply assumed that Plaintiff was supposed to receive the invoice – because he was still employed as a District Sales Manager for the Company at the time – and forwarded it on to Dossat at his home address.

As soon Defendants' counsel determined how the invoices were sent to Plaintiff, Defendants' counsel was able to rectify the problem and it never recurred.

Neither Howard & Howard nor Defendants' in-house counsel ever sent Plaintiff invoices intentionally or by accident. Plaintiff's assertion to the contrary is an utter fabrication and misrepresents the facts. Further, the only document produced during discovery which indicated that Plaintiff might try to introduce the invoices was Dossat's Supplementary Interrogatory Responses, which were served on February 3, 2010. Therefore, Defendants have not been dilatory in moving to exclude them from evidence.

**1. Plaintiff's Contention That Defendants' Counsel Violated The Model Rules Of Professional Conduct Is Sheer Nonsense.**

Plaintiff's Response contends that Defendants' Counsel violated Rule 4.2 of the Model Rules of Professional Conduct (i.e. unauthorized communication with a party represented by counsel and waiver) by sending the invoices directly to Dossat. Plaintiff's allegation is ludicrous. Plaintiff's counsel is well aware that Defendants' outside and in-house counsel had nothing to do with Howard & Howard's invoices being inadvertently sent to Plaintiff. For Plaintiff to knowingly claim otherwise, constitutes a violation of Rule 3.3(1) and Rule 3.4(2) of the Nevada Rules of Professional Conduct. Accordingly, Plaintiff's attorney should be appropriately reprimanded.

**B. PLAINTIFF'S CASE LAW REGARDING WAIVER IS INAPPOSITE.**

Plaintiff's Response relies on *Weil v. Investment/Indicators, Research and Management, Inc.*, 647 F.2d 18 (C.A. 1981), which held that the burden of proving the attorney-client rests with the party asserting it, and that it must prove there was not a waiver of the privilege. The Court also concluded that where party asserting privilege had disclosed the

1 content of a privileged communication which was relevant and material to an issue in the case,  
2 the party's *bare assertion* that it did not subjectively intend to waive the privilege was  
3 insufficient to make out necessary element of nonwaiver. Finally, the Court stated that the  
4 privilege holder must have pursued all reasonable means to preserve confidentiality. *Id.* at 25.

5 In the present case, Defendants have not simply made a bare assertion of nonwaiver.  
6 Defendants' have explained and demonstrated that the invoices were inadvertently forwarded  
7 to Plaintiff's home by Roche's accounting department. Clearly, Howard & Howard's invoices  
8 were never intended to be seen by Plaintiff or his counsel.

9 The invoices are also not relevant and material to any issues in the case. Plaintiff  
10 maintains the invoices support his retaliation claim because they reveal that Defendants  
11 intended to terminate Plaintiff's employment. They do not. Plaintiff neglects to mention that  
12 he was never fired – Dossat was administratively terminated in May 2010 after his Short Term  
13 Disability leave expired and he refused to return to work (despite his doctor stating that he was  
14 medically fit to resume his duties). Further, Plaintiff was administratively terminated  
15 approximately 1 ½ years after Howard & Howard's invoices were forwarded to him.

16 Further, the invoices simply reflect that Plaintiff's termination was *discussed* between  
17 Defendants and their counsel. Plaintiff does not need to introduce Howard & Howard's  
18 invoices to present this information. Plaintiff already deposed Defendants' Human Resources  
19 Manager, Kristine Koptchev, who testified that she was present during meetings where  
20 Dossat's termination was discussed. If this matter goes to trial, Plaintiff can simply call  
21 Koptchev as a witness to achieve the same result.

22 **C. CONCLUSION.**

23 Defendants' legal invoices are privileged communications between Defendants and  
24 their counsel. *See* FRE 501. It is clear from the correspondence between Plaintiff's attorney  
25 and Defendants' counsel that Plaintiff's attorney knew that the documents were privileged and  
26 were inadvertently forward to Dossat by Roche's accounting department; yet, she did not return  
27 the documents, even after Defendants' counsel immediately asked to send a runner to retrieve  
28 the invoices. Defendants and their counsel would never have authorized the release of legal

1 invoices to Plaintiff. Accordingly, Plaintiff should not be permitted to introduce the invoices or  
2 testify about their contents. In addition, Plaintiff should be ordered to redact any and all  
3 references to Howard & Howard's invoices in his responses to discovery requests.

4  
5 Dated: July 5, 2010

Howard & Howard Attorneys PLLC

6  
7 By: /s/ Robert L. Rosenthal

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